

§ 3.276 Certain transfers or waivers disregarded.

(a) *Waiver of receipt of income.* Potential income, not excludable under § 3.272 and whose receipt has been waived by an individual, shall be included as countable income of that individual for Department of Veterans Affairs pension purposes.

(b) *Transfer of assets.* For pension purposes, a gift of property made by an individual to a relative residing in the same household shall not be recognized as reducing the corpus of the grantor's estate. A sale of property to such a relative shall not be recognized as reducing the corpus of the seller's estate if the purchase price, or other consideration for the sale, is so low as to be tantamount to a gift. A gift of property to someone other than a relative residing in the grantor's household will not be recognized as reducing the corpus of the grantor's estate unless it is clear that the grantor has relinquished all rights of ownership, including the right of control of the property.

(Authority: 38 U.S.C. 501)

§ 3.277 Eligibility reporting requirements.

(a) *Evidence of entitlement.* As a condition of granting or continuing pension, the Department of Veterans Affairs may require from any person who is an applicant for or a recipient of pension such information, proofs, and evidence as is necessary to determine the annual income and the value of the corpus of the estate of such person, and of any spouse or child for whom the person is receiving or is to receive increased pension (such child is hereinafter in this section referred to as a *dependent child*), and, in the case of a child applying for or in receipt of pension in his or her own behalf (hereinafter in this section referred to as a *surviving child*), of any person with whom such child is residing who is legally responsible for such child's support.

(b) *Obligation to report changes in factors affecting entitlement.* Any individual who has applied for or receives pension must promptly notify the Secretary in writing of any change affecting entitlement in any of the following:

(1) Income;

(2) Net worth or corpus of estate;
 (3) Marital status;
 (4) Nursing home patient status;
 (5) School enrollment status of a child 18 years of age or older; or
 (6) Any other factor that affects entitlement to benefits under the provisions of this Part.

(c) *Eligibility verification reports.* (1) For purposes of this section the term eligibility verification report means a form prescribed by the Secretary that is used to request income, net worth, dependency status, and any other information necessary to determine or verify entitlement to pension.

(2) The Secretary shall require an eligibility verification report under the following circumstances:

(i) If the Social Security Administration has not verified the beneficiary's Social Security number and, if the beneficiary is married, his or her spouse's Social Security number;

(ii) If there is reason to believe that the beneficiary or his or her spouse may have received income other than Social Security during the current or previous calendar year; or

(iii) If the Secretary determines that an eligibility verification report is necessary to preserve program integrity.

(3) An individual who applies for or receives pension as defined in § 3.3 of this part shall, as a condition of receipt or continued receipt of benefits, furnish the Department of Veterans Affairs an eligibility verification report upon request.

(d) If VA requests that a claimant or beneficiary submit an eligibility verification report but he or she fails to do so within 60 days of the date of the VA request, the Secretary shall suspend the award or disallow the claim.

(Authority: 38 U.S.C. 1506)

[44 FR 45936, Aug. 6, 1979, as amended at 60 FR 51922, Oct. 4, 1995]

RATINGS AND EVALUATIONS; BASIC
 ENTITLEMENT CONSIDERATIONS

§ 3.301 Line of duty and misconduct.

(a) *Line of duty.* Direct service connection may be granted only when a disability or cause of death was incurred or aggravated in line of duty, and not the result of the veteran's own

willful misconduct or, for claims filed after October 31, 1990, the result of his or her abuse of alcohol or drugs.

(Authority: 38 U.S.C. 105)

(b) *Willful misconduct.* Disability pension is not payable for any condition due to the veteran's own willful misconduct.

(Authority: 38 U.S.C. 1521)

(c) *Specific applications; willful misconduct.* For the purpose of determining entitlement to service-connected and nonservice-connected benefits the definitions in §§3.1 (m) and (n) of this part apply except as modified within paragraphs (c)(1) through (c)(3) of this section. The provisions of paragraphs (c)(2) and (c)(3) of this section are subject to the provisions of §3.302 of this part where applicable.

(Authority: 38 U.S.C. 501)

(1) *Venereal disease.* The residuals of venereal disease are not to be considered the result of willful misconduct. Consideration of service connection for residuals of venereal disease as having been incurred in service requires that the initial infection must have occurred during active service. Increase in service of manifestations of venereal disease will usually be held due to natural progress unless the facts of record indicate the increase in manifestations was precipitated by trauma or by the conditions of the veteran's service, in which event service connection may be established by aggravation. Medical principles pertaining to the incubation period and its relation to the course of the disease; i.e., initial or acute manifestation, or period and course of secondary and late residuals manifested, will be considered when time of incurrence of venereal disease prior to or after entry into service is at issue. In the issue of service connection, whether the veteran complied with service regulations and directives for reporting the disease and undergoing treatment is immaterial after November 14, 1972, and the service department characterization of acquisition of the disease as *willful misconduct* or as *not in line of duty* will not govern.

(2) The simple drinking of alcoholic beverage is not of itself willful misconduct. The deliberate drinking of a

known poisonous substance or under conditions which would raise a presumption to that effect will be considered willful misconduct. If, in the drinking of a beverage to enjoy its intoxicating effects, intoxication results proximately and immediately in disability or death, the disability or death will be considered the result of the person's willful misconduct. Organic diseases and disabilities which are a secondary result of the chronic use of alcohol as a beverage, whether out of compulsion or otherwise, will not be considered of willful misconduct origin. (See §§21.1043, 21.5041, and 21.7051 of this title regarding the disabling effects of chronic alcoholism for the purpose of extending delimiting periods under education or rehabilitation programs.)

(Authority: 38 U.S.C. 501)

(3) *Drug usage.* The isolated and infrequent use of drugs by itself will not be considered willful misconduct; however, the progressive and frequent use of drugs to the point of addiction will be considered willful misconduct. Where drugs are used to enjoy or experience their effects and the effects result proximately and immediately in disability or death, such disability or death will be considered the result of the person's willful misconduct. Organic diseases and disabilities which are a secondary result of the chronic use of drugs and infections coinciding with the injection of drugs will not be considered of willful misconduct origin. (See paragraph (d) of this section regarding service connection where disability or death is a result of abuse of drugs.) Where drugs are used for therapeutic purposes or where use of drugs or addiction thereto, results from a service-connected disability, it will not be considered of misconduct origin.

(Authority: 38 U.S.C. 105, 1110, 1121, 1131, 1301, and 1521(a))

(d) *Line of duty; abuse of alcohol or drugs.* An injury or disease incurred during active military, naval, or air service shall not be deemed to have been incurred in line of duty if such injury or disease was a result of the abuse of alcohol or drugs by the person on whose service benefits are claimed.

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For the purpose of this paragraph, alcohol abuse means the use of alcoholic beverages over time, or such excessive use at any one time, sufficient to cause disability to or death of the user; drug abuse means the use of illegal drugs (including prescription drugs that are illegally or illicitly obtained), the intentional use of prescription or non-prescription drugs for a purpose other than the medically intended use, or the use of substances other than alcohol to enjoy their intoxicating effects.

(Authority: 38 U.S.C. 105(a))

[26 FR 1579, Feb. 24, 1961, as amended at 37 FR 24662, Nov. 18, 1972; 54 FR 31951, Aug. 3, 1989; 55 FR 13530, Apr. 11, 1990; 60 FR 27408-27409, May 24, 1995]

CROSS-REFERENCES: In line of duty. See §3.1(m). Willful misconduct. See §3.1(n). Extended period of eligibility. See §§21.1043 and 21.7051. Periods of entitlement. See §21.5041.

§3.302 Service connection for mental unsoundness in suicide.

(a) *General.* (1) In order for suicide to constitute willful misconduct, the act of self-destruction must be intentional.

(2) A person of unsound mind is incapable of forming an intent (*mens rea*, or guilty mind, which is an essential element of crime or willful misconduct).

(3) It is a constant requirement for favorable action that the precipitating mental unsoundness be service connected.

(b) *Evidence of mental condition.* (1) Whether a person, at the time of suicide, was so unsound mentally that he or she did not realize the consequence of such an act, or was unable to resist such impulse is a question to be determined in each individual case, based on all available lay and medical evidence pertaining to his or her mental condition at the time of suicide.

(2) The act of suicide or a bona fide attempt is considered to be evidence of mental unsoundness. Therefore, where no reasonable adequate motive for suicide is shown by the evidence, the act will be considered to have resulted from mental unsoundness.

(3) A reasonable adequate motive for suicide may be established by affirmative evidence showing circumstances which could lead a rational person to self-destruction.

(c) *Evaluation of evidence.* (1) Affirmative evidence is necessary to justify reversal of service department findings of mental unsoundness where Department of Veterans Affairs criteria do not otherwise warrant contrary findings.

(2) In all instances any reasonable doubt should be resolved favorably to support a finding of service connection (see §3.102).

[28 FR 183, Jan. 8, 1963, as amended at 54 FR 31951, Aug. 3, 1989; 55 FR 13530, Apr. 11, 1990]

CROSS REFERENCE: Cause of death. See §3.312.

RATINGS AND EVALUATIONS; SERVICE CONNECTION

§3.303 Principles relating to service connection.

(a) *General.* Service connection connotes many factors but basically it means that the facts, shown by evidence, establish that a particular injury or disease resulting in disability was incurred coincident with service in the Armed Forces, or if preexisting such service, was aggravated therein. This may be accomplished by affirmatively showing inception or aggravation during service or through the application of statutory presumptions. Each disabling condition shown by a veteran's service records, or for which he seeks a service connection must be considered on the basis of the places, types and circumstances of his service as shown by service records, the official history of each organization in which he served, his medical records and all pertinent medical and lay evidence. Determinations as to service connection will be based on review of the entire evidence of record, with due consideration to the policy of the Department of Veterans Affairs to administer the law under a broad and liberal interpretation consistent with the facts in each individual case.

(b) *Chronicity and continuity.* With chronic disease shown as such in service (or within the presumptive period under §3.307) so as to permit a finding of service connection, subsequent manifestations of the same chronic disease at any later date, however remote, are service connected, unless clearly attributable to intercurrent causes.